TO: UTILITIES SUBJECT TO CHAPTER 81, DISCONNECTION AND DEPOSIT RULES FOR RESIDENTIAL UTILITY SERVICE

FROM: BARBARA R. ALEXANDER, DIRECTOR, CONSUMER ASSISTANCE DIVISION (W



RE: DISCONNECTION FOR UNAUTHORIZED OR FRAUDULENT USE

Chapter 81, Section 2(A)(3) allows a utility to seek disconnection of a residental customer for "unauthorized or fraudulent procurement of utility services." The Consumer Assistance Division has received several requests to clarify this provision and the disconnection procedures to be used in this situation.

I. Unauthorized Use. Utility usage is unauthorized when it is obtained without permission. The term includes meter tampering (an act which affects the proper registration of service through the meter), by-passing (unmetered service) and unauthorized service restoration. Unauthorized use does not refer to trespass on the property of a customer and use of electricity without the permission of the customer; that is an issue between the landowner and the trespasser.

A utility may not disconnect without proper notice unless there is a "condition dangerous to health or safety, or detrimental to the utility service of others." Section 2(A)(3). If these criteria are not met, the utility must give 14-day notice pursuant to Section 4 of Chapter 81.

The CAD views usage by an unknown occupant on a left connected meter as "unauthorized" only if the utility has notified the current occupant that a service application is required. The utility is under an obligation to attempt to establish the identity of the occupant and solicit application for service. If the occupant fails to respond to this request, the utility may initiate the disconnection process by sending a regular 14-day disconnect notice pursuant to Section 4 of Chapter 81. This disconnect notice must contain all of the disclosures required by Section 4 (E). If the utility's tariffs so provide, it may bill the occupant for service and reserve the right to seek payment or payment arrangements on any outstanding bill from previous service and, if appropriate, a deposit once a proper application for service has been made.

II. Fraudulent Use. The definition of "fraud" is to trick, a deception to cause a person to give up property or some lawful right, or an imposter or one who deceives or is not what he pretends to be. A utility often seeks to allege fraud when an individual uses a different name to obtain utility service in order to avoid payment of a prior bill or security deposit.

If an individual seeks utility service under a different name and the utility discovers this fact after granting service, it may investigate and seek to collect any outstanding amount owed. If the current customer refuses reasonable efforts at contact to respond to the

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allegation or the request for payment or payment arrangment, the utility may issue a disconnection notice which conforms with the requirements of Section 4 and the disclosures of Section 4(E).

Most of these situations can be avoided with a more careful application for service process. If every new applicant is asked whether they have ever had service under this or any other name, and the utility checks a central write off file, most situations can be handled prior to granting customer status. If an applicant lies or misleads the utility in answering these questions, the utility's allegation of fraud is more likely to withstand any future investigation. It is our experience that customers who have had service under a prior name were often not asked this question. In addition, it is crucial that the utility be sensitive to the right of married women to use their maiden name upon separation, divorce or simply for personal or professional reasons. It is not fraud (i.e., no intent) to use a different name if the use is not done for the purpose of deceit. In short, if you do not ask, you will never know.

It is also our experience that some customers resort to the use of different names in order to escape payment of a bill or a deposit they financially cannot afford. Informal contact in such a situation coupled with proper referral to sources of financial assistance often can resolve the situation. Failure to negotiate a payment arrangement can be referred to CAD pursuant to Section 5 of Chapter 81. The object of the utility is or should be the sale of service with proper reimbursement, not punishment by means of disconnection.

An adult who misrepresents his or her identity by using the name of a minor child in the household to obtain service and avoid payment of an outstanding debt has arguably committed fraudulent conduct. situation differs from the case in which a minor (an individual under 18) requests service as a customer. In the latter case, the utility may seek sufficient information in order to determine if the applicant is capable of paying for the utility service. If not, the attribution rules under Section 11(A)(5) allow the utility to seek a deposit. alone should not be the determinative factor in deciding the utility's obligation to serve. A minor may be receiving financial aid or living independently of adults. A minor's contract for "necessaries" is not voidable by reason of his age. 33 M.R.S.A. Section 52. Again, recourse to a Section 13 waiver may be appropriate when the utility has reasonable grounds to believe that the minor's application is for the purpose of assisting an adult member of the household to avoid payment of outstanding amounts owed.

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CAD does not believe it is necessarily fraudulent for an adult to apply for service in order to avoid the payment of the outstanding bill of an another adult in the household. Chapter 81's attribution rules in Section 11 (A)(4) and (5) concerning deposits allow the utility to attribute the financial and credit history of spouses and other unrelated adults in the residential unit only if the applicant adult is financially dependent on the previous customer. Implicit in this provision is the policy that an adult applicant who is otherwise credit-worthy should not be saddled with the bad debt burden of the previous customer. There will be, of course, exceptions to this general rule. If a utility seeks to attribute financial and credit history when Section 11 (A)(4) or (5) would not so allow, a waiver or exemption from the rule may be sought from the Consumer Assistance Div. pursuant to Section 13(B).

Most of these situations involve facts unique to the specific situation. It is the utility's obligation to research the facts and act accordingly. It is not appropriate for the utility to routinely refer fraudulent or unauthorized use cases to CAD pursuant to Section 13 (Waiver) unless it desires a course of conduct contrary to the specific provisions of Chapter 81. If the utility has complied with the provisions of Section 4 concerning the disconnect notice in these situations, the customer will be notified of their right to appeal an allegation of fraud to the CAD or to seek our assistance in negotiating a payment arrangement.

It is also proper and preferable in some cases for the utility to seek payment of prior debts by means other than disconnection, i.e., Small Claims Court. This option is appropriate when service has been granted to another adult occupant after the previous customer defaults or suffers disconnection. Whether or not a utility has a right to disconnect is not determinative of the utility's right to seek payment for lawful amounts owed.

There has been some confusion in the past concerning when a 10-day disconnection notice is required. Section 4(D) prohibits a utility from disconnecting the service of leased or rented property at the request of the landlord, lessor or owner of the property unless the owner or lessor furnishes a notarized statement by the tenant that agrees to the disconnection or a notarized statement by the owner or lessor that the premises are vacant. If such a statement is not provided, the utility must give at least 10 days notice of the termination of service to at least one adult occupant of the premises and offer the tenant an opportunity to put the service in his or her name. This procedure is also required when disconnection is sought by the municipality who has put the residential service in their name. While the rule does not so specify, CAD expects that the 10-day disconnect notice will contain the disclosures, at a minimum, required by Section 4(E). The 10-day notice is not appropriate unless the disconnection has been requested by a

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third party in a rented or leased residential unit. In all other cases, a regular 14-day disconnection notice or a 3-day broken payment arrangement notice is required.

During the Winter Disconnection Period additional rules are applicable to electric and gas utilities. For example, all disconnection notices must be accompanied by personal contact efforts and occupants must be offered an opportunity to apply for a Special Payment Arrangement.

Your comments or questions on these issues will be welcome. CAD Bulletins are informal opinions of the Consumer Assistance Division and do not reflect the opinion or decision of the Commission. An Advisory Ruling may be requested by the Commission pursuant to Chapter 11, Section 5 of the Rules of Practice and Procedure.